MULTIMEDIA UNIVERSITY

STUDENT ID NO

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# MULTIMEDIA UNIVERSITY

# FINAL EXAMINATION

**TRIMESTER 2, 2022/2023**

## UDL3622 – LAND LAW II

(All Sections / Groups)

13 JULY 2023
Reading Time : 9:00 a.m. – 9:15 a.m.
(15 Minutes)
Answering Time: 9:15 a.m. – 12:15 p.m.
(3 Hours)

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**INSTRUCTIONS TO STUDENT**

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in the question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 Questions only.

3. This Question paper consists of 2 sections. Attempt ONE question only in **Section A** and all THREE questions in **Section B.** All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall CLEAN and ORIGINAL copy of **National Land Code (Revised -2020) (Act 828).**

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

**SECTION A (Answer ONE Question only)**

## QUESTION 1

The debate of whether Malaysia recognised immediate indefeasibility or deferred indefeasibility has been settled since 2010 by the Federal Court in the case of *Tan Ying Hong v Tan Siang Sang & Ors* [2010] 2 MLJ 1. Nevertheless, the concept of deferred indefeasibility seems to be extended by the Federal Court in *Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors* [2014] 2 MLJ 768, which imposed a requirement of double bona fide.

With reference to recent case developments, show who is or should be a subsequent purchaser eligible to the defence of bona fide purchaser for value under the proviso to section 340(3) of the National Land Code (Revised 2020).

**(Total: 25 marks)**

**OR**

## QUESTION 2

(a) With reference to relevant case law, demonstrate the concept of "bare trust" in the transfer of land under the National Land Code (Revised 2020) and the significance of application of such concept.

(15 marks)

(b) Section 227 (1) and (2) of the National Land Code (Revised 2020) provides that "the interest of any lessee shall vest in him on the registration of the lease and the said interest shall include the benefit of all registered interests then enjoyed with the land to which it relates."

Based on relevant case law, show the applicability of the relevant equitable principle in the case of an unregistered lease.

(10 marks)

**(Total: 25 marks)**

**Continued...**

**SECTION B (Answer all THREE questions)**

**QUESTION 3**

(a) With reference to relevant statutory provisions and supporting case law, predict the obstacles in the law and procedure that one must take note (including but not limited to the aspects of prohibition, limitation, and restrictions in interests) in order to ensure that Peter Pan, a Malaysian, can safely transfer half of his house to his wife, Hiroshima, a Japanese lady. You may make reasonable assumption of facts in order to provide a comprehensive answer.

(10 marks)

(b) Mochi was informed by Kuaci that his brother, Oishi, intended to sell his agricultural land in Kubang Menerong, Bandar Bertam, Kepala Batas, Penang ("the land") at a price of RM1.5 million.

Mochi and Oishi met several times to negotiate the purchase price of the land. On 30 March 2023, both Mochi and Oishi agreed to withhold the execution of the sale and purchase agreement until 15 May 2023.

Subsequently, Mochi asked Oishi to deposit the original issue document of title of the land ("the title") with him to enable him to apply for a loan from Maybung Bank Berhad ("MBB"). Oishi deposited the title with Mochi on 1 April 2023.

On 15 April 2023, unknown to Oishi, Mochi instructed his solicitor to lodge a private caveat on the land.

Oishi requested Mochi to return the title on 16 May 2023 since they did not reach an agreement by 15 May 2023. Mochi refused to return the title and claimed that he has a right as lienholder over the land.

With reference to relevant authorities, show the legal position of Mochi and Oichi and the possible remedies available to the parties (if any).

(15 marks)

**(Total: 25 marks)**

**Continued...**

## QUESTION 4

Selena was the registered proprietor of a piece of agricultural land in Gebeng held under Geran 17, Lot 18, Gebeng, Kuantan, Pahang ("the land"). Brooke and David agreed to purchase the land from Selena at a price of RM500,000.00. There was a mutual understanding between Brooke and David that the land, when acquired, was to be registered in their joint names in equal shares. David subsequently provided a sum of RM198,110.00 towards part of the purchase price of the land. A sale agreement was executed between Selena (as vendor) and Brooke and David (as purchasers) on 9 December 2019.

Subsequently, Brooke informed David that the transfer of the land cannot be registered into both their names. He further claimed that the law does not permit a transfer of the land to two or more persons as co-proprietors over an agricultural land in Pahang.

In view of this, Brooke told David that the land should be transferred only into his name. Brooke promised David that the land would soon be subdivided into two lots with separate documents of title for each lot and one lot would be transferred to David. David agreed to Brooke's suggestion.

After the completion of the transfer, instead of subdividing the land and transferring one lot to David, Brooke transferred the land to his wife, Martha, as a gift. Martha is not aware of the arrangement between Brooke and David. The transfer was registered on 15 January 2020. After the transfer was completed, Martha kept the issue document of title.

On 8 June 2020, Brooke persuaded Martha to hand over the issue document of title of the land to him. The reason given by Brooke to Martha was to enable him to obtain a loan from Blue Bank Berhad ("the bank") for a sum of RM400,000.00. In creating a third-party charge, Brooke had forged Martha's signature as security for the loan granted to him.

It was stipulated in the loan agreement that in the event of default by the borrower, the chargee is entitled to terminate the loan agreement and demand for the full outstanding amount together with interest. It was also provided in the terms of the loan agreement that the borrower or the chargor shall remedy any default within seven (7) days from the date of notice served on him. The charge documentation was duly registered on 25 June 2020.

Unfortunately, Brooke's contract of employment has been terminated due to COVID-19 pandemic. As a result, he failed to repay the instalment of the loan for the month of April and May 2022 respectively. Based on the above stipulated clause, the bank demanded for the full payment of the loan inclusive of interest by using Form 16D and served it on Brooke on 1 June 2022.

**Continued...**

Recently, David realised that the land was transferred to Martha and the charge was created in favour of the bank. When confronted by David, Brooke told David that he had lost all his legal rights in respect of the land. Martha decided to object to the bank's application to obtain order for sale.

As a legal expert, prepare your legal advice to all the parties accordingly.

**(Total: 25 marks)**

## QUESTION 5

Mr. Eng Dao Ba was a successful bidder in a public auction over a property known as Geran 5354, Lot 932, Bandar Melaka, Daerah Melaka Tengah ("the land"). The land was previously registered in the name of Mr. Bo Bian who has defaulted in the loan repayment to Perkasa Bank Berhad ("PBB"), the chargee bank. Upon settling the balance purchase price, the High Court has issued Mr. Eng Dao Ba with a certificate of sale. Prior to the presentation of the certificate of sale to the Land Registry for registration, it was discovered as follows:

(a) that a private caveat was entered by PBB on 18 May 2017;

(b) that a private caveat was also entered by Shawn Lon who had lent money to Mr. Bo Bian in January 2021 to help Mr. Bo Bian overcoming his financial difficulty in business;

(c) that a private caveat has been entered by Mr. Bo Bian on 2 May 2023 on the land to defend his property from being sold by PBB;

(d) that there was a restriction in interests endorsed on the land title; and

(e) that a Registrar's caveat has been entered by the Registrar on the application of Ms. Mei Ren Ai to prevent any fraudulent dealing. She claimed that her signature was forged and causing her losing the title ownership of the land to Mr. Bo Bian in December 2019.

Prepare a legal opinion to Mr. Eng Dao Ba on how he could successfully present the certificate of sale for registration. Your answer shall include the suitable law and procedure on removal and/or cancellation of the caveat(s), if any.

**(Total: 25 marks)**

**End of Page**